

Attorney Docket No. NC 84,641

REMARKS/ARGUMENTS

Applicants are responding to the 10/15/2006 Office Action calling for a two-way restriction and election of species. The restriction required election of one of the following inventions:

- I. Claims 1-15, drawn to a method of detecting a *Bacillus anthracis* protein in a competitive immunoassay format.
- II. Claims 16-27, drawn to a method of detecting antibodies with a fluorochrome labeled reagent that directly binds to the antibody.

Applicants elect Group I, claims 1-15 drawn to a method of detecting a *Bacillus anthracis* protein in a competitive assay, with traverse. Applicants also elect the species claims 1 – 15 for the detection of protective antigen protein. Applicants contend that newly amended claim 1 is now generic to detection of lethal factor, protective antigen and edema factor protein (i.e., now contained in newly added claim 28), native or recombinant *Bacillus anthracis* protein or fragment (i.e., claim 6) and native or recombinant *Bacillus anthracis* protective antigen, edema factor or lethal factor (i.e., claim 6).

Claim 1 was amended by deleting from step (a), “protein” and adding “*Bacillus anthracis* polypeptide” and also by adding to step (b), “consisting of *Bacillus anthracis* polypeptide.” Other changes were also made to claim 1 in order to improve clarity of reading. Applicants also added claim 28, which depends from claim 1, and includes the species protective antigen, lethal factor and edema factor.

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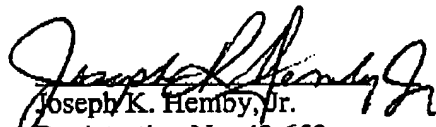
Traverse

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) the invention must be independent or distinct; and (B) there must be a serious burden on the Examiner if restriction is required. MPEP 803.

In the current case, both Groups I and II are both contained in Class 435, with the method of using competitive immuno-assay (i.e., FP, FLT or FRET) applied to the same organism (i.e., *Bacillus anthracis*). Since there is only a limited and narrow prior art search that is required there is no basis to establish that a joint search of Group I and II, in a single application, would be burdensome.

The restriction requirement fails to fulfill the burden of establishing the criteria necessary for a proper restriction requirement. Accordingly, Applicants respectfully request that Group I and Group II claims be rejoined for prosecution in this application.

Respectfully submitted,


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